



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th DECEMBER, 2025

IN THE MATTER OF:

+ **CRL.A. 307/2002**

LAKHPAT SINGH

.....Appellant

Through: Mr. Rakesh Kumar Dudeja,
Mr.Madan Lai Kalkal, Advocates

versus

STATE

.....Respondent

Through: Mr. Aashneet Singh, APP
SI Praveen Kumar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant appeal has been preferred by the Appellant/Accused herein challenging the Judgment dated 27.08.2001 passed by the learned Additional Sessions Judge, New Delhi (*hereinafter referred to as "Trial Court"*) *vide* which the Appellant was convicted for the offences punishable under Sections 302, 364 and 201 of the IPC in SC No.67/2001 arising out of FIR No. 522/96 registered at Police Station Defence Colony, New Delhi. *Vide* Order of sentence dated 06.09.2001, which is also under challenge, the Appellant was sentenced to undergo – life imprisonment along with a fine of Rs. 100/- under Section 302 of the IPC and in case of default of fine, the Appellant to undergo 2 days of rigorous imprisonment; life imprisonment along with a fine of Rs. 50/- under Section 364 of IPC and in the event of



default, one day rigorous imprisonment to be undergone; and 7 years of rigorous imprisonment along with a fine of Rs. 50/- under Section 201 of the IPC and in case of default, the Appellant shall be subjected to one day of rigorous imprisonment.

2. Shorn of unnecessary details, the facts leading to the filing of the instant appeal are as follows:-

- a. On 07.06.1996, a dead body of an unknown person was found lying on the banks of Hindon River, Ghaziabad, Uttar Pradesh. One Dhani Ram (PW-9) who saw the dead body informed the concerned police officials. Due to non-identification of the dead body, the police officials cremated the said body on 08.06.1996.
- b. On 08.06.1996, Shakuntala (PW-1) filed a missing report regarding her husband, namely, one Roshan Lal Gupta, in Police Station Defence Colony, New Delhi and accordingly, an FIR bearing no. 522/96 was lodged.
- c. As per the FIR, Roshan Lal Gupta was a retired Government employee, who was working in a private entity of one Surender Kumar Gupta (PW-7). It has been stated that the Appellant was in talks with her husband to set up a factory for hair oils. The Appellant had asked Roshan to provide for some money for the said purpose but the same was refused by PW-1. It has been stated that there were instances where the Appellant had asked Roshan to meet him for recovering some money, however, the same was duly refused by PW-1.
- d. As per the Complaint, on 06.06.1996, Roshan left the house at around 8:30AM for work and did not return home. It has been stated that the



Appellant visited the house of the deceased on 07.06.1996, he, however, seemed tense and after knowing that the deceased is missing assured them that he will find out the whereabouts of Roshan, the deceased.

- e. Material on record indicates that the pictures of an unidentified dead body were shown to PW-1, who confirmed that the said body is of her husband i.e., Roshan, the deceased and the same was cremated by the police on 08.09.1996.
- f. On 13.06.1996, the Appellant was arrested and it is the case of the prosecution that the wrist watch of the deceased was recovered from the Appellant. On 14.06.1996, the co-accused Vinod and Gian Chand were arrested and a stainless-steel box, a tiffin, a spoon and a small knife were recovered from Vinod. A Milton water bottle was recovered from Gian Chand. According to the prosecution, the said articles belong to the deceased.
- g. The Appellant denied all the charges levelled against him and chose to be put on trial.
- h. After the trial, *vide* impugned judgment, the learned Trial Court convicted the Appellant for the offences committed under Sections 302, 364 and 201 of the IPC. The Trial Court was of the view that the testimonies of PW1, PW2 and PW7 established the Appellant was in talks with the deceased and that the story of the prosecution that the Appellant had committed the offence of murder is correct as the testimonies match with the other evidence placed on record. However, it observed that the prosecution could not establish any case against the other co-accused persons and there is no case against the



Appellant regarding the commission of the offence of kidnapping for ransom. Therefore, the learned Trial Court acquitted all the co-accused.

- i. *Vide* a separate Order of sentence dated 06.09.2001, the Appellant was sentenced to undergo – life imprisonment along with a fine of Rs. 100/- under Section 302 of the IPC and in case of default of fine, the Appellant to undergo 2 days of rigorous imprisonment; life imprisonment along with a fine of Rs. 50/- under Section 364 of IPC and in the event of default, one day rigorous imprisonment to be undergone; and 7 years of rigorous imprisonment along with a fine of Rs. 50/- under Section 201 of the IPC and in case of default, the Appellant shall be subjected to one day of rigorous imprisonment.
- j. It is these orders which are under challenge in the present appeal.

3. Learned Counsel for the Appellant stated that the case of the prosecution does not hold any water as they have failed to prove the case “beyond reasonable doubt”. It is contended that there are many fallacies and discrepancies in the story of the prosecution.

4. It is stated that the prosecution failed to prove that the unidentified body found at the banks of River Hindon belongs to the deceased. It is stated that as per the post-mortem report, the body is 3 days old, however, as per the chronological events narrated by PW-1, PW-2 and PW-7, the body is supposed to be 1 day old. Moreover, PW-1 and PW-2 identified merely based on the clothes of the deceased and not the physical feature of the deceased.

5. It is further contended that there is a discrepancy in the age of the deceased as the witness testimonies have consistently said that the body



found by the police is somewhere around 30-35 years of age, whereas the age of the deceased was 58 years. It is stated that merely stating that the deceased looked younger to his actual age, cannot lead to a conclusion that the body which has been found is that of the deceased.

6. It is submitted that the missing of the deceased and the recovery of the unidentified dead body are completely unrelated and the prosecution failed to complete the chain of events between the two incidents. There is unjustifiable gap between the two incidents and it is trite law that when it is a case of circumstantial evidence, the gap between the events is to be completed.

7. *Per Contra*, learned APP for the State supports the case of the prosecution and states that the learned Trial Court had rightly convicted the Appellant under Section 302, 364, 201 of the IPC as the prosecution was able to satisfy the threshold of “beyond reasonable doubt”. It is contended that the unidentified body and the articles recovered from the accused persons were identified by PW-1. Further, the accused persons had a motive to commit the murder as the deceased was not meeting their wish, thereby establishing that the accused persons were behind the murder of the deceased.

8. Heard the learned Counsels for the parties and perused the material on record.

9. At this juncture, it is necessary for this Court to examine the witness testimonies recorded before the learned Trial Court. The prosecution examined 24 witnesses. There are no defence witnesses.

10. The wife of the deceased, Smt. Shakuntala was examined as PW-1. It is stated in her deposition that the deceased was a retired government



employee, who was working for M/s Gupta Associates, owned by one Surender Gupta (PW-7). Regarding the relationship with the Appellant, PW-1 stated that the Appellant used to visit the deceased occasionally, regarding pertaining the opening of a factory for hair oils and also assuring the deceased that he will be made the Manager of the said factory. Thereafter, the Appellant had also demanded a sum of Rs. 2 Lakhs and later, another sum of Rs. 10,000/-. However, the same was not agreed to by the Appellant as also supported by PW-1. She stated that the deceased used to leave for office at around 8:30AM and return home at around 6:30PM. She states that on 04.06.1996, deceased returned home only at around 11:30PM and that she got to know that he was with the Appellant. It is stated by PW-1 that on 06.06.1996, the deceased left to office at the usual time, however, he did not return home even on the consecutive day, which compelled her to file a missing report with the help of PW-7. In her deposition, she testified that on 07.06.1996, the Appellant visited her home enquiring about the deceased, however, when informed that the deceased did not return home from work, the Appellant showed palpable reactions of anxiousness and nervousness. Accordingly, on 08.06.1996, an FIR was filed against the Appellant.

11. As per her deposition, she was informed about the arrest of the Appellant on 13.06.1996 and that she along with her brother had gone to the Police Station Vijay Nagar, wherein the articles recovered at Hindon River were shown to her. It is stated that the clothes, silver ring, silver *kada*, shoes were identified by her to be of her deceased husband. She also stated that she identified the black bag made of crochet, water bottle, hot box with 3 tiffins, a small steel box, spoon, knife, wrist watch, apartment papers, which belongs to the deceased. Further, she also stated that she identified blood-



stained white colour pants with black belt, blood stained torn white shirt, blood stained white socks, blood stained undergarments, white shoes, three coloured stones, silver *kada*, silver ring with a stone – all of which were being worn by the deceased on 06.06.1996.

12. In her cross-examination, when asked about the age of the dead body, she denied that it looked like a person of an age of 28/30 years. She also stated that the deceased looked much younger to his age and that he used to apply *mehendi* on his hair. It is also stated that she identified the dead body as that of her husband's only after seeing the photographs of the clothes and other apparel. It is also stated by PW-1 that on 07.06.1996, while filing a missing report, she expressed suspicion over one Vikas Mittal, who also lent money from the deceased. However, she states that the said money was already returned by Vikas Mittal.

13. Ms. Bhawna, PW-2, daughter of the deceased, concurred with the testimony of PW-1 stating the very same version of events. In her cross examination, she denied knowing anyone with the name Vikas Mittal. She also stated that the deceased was of 55 years of age and that he used to look much younger than his actual age.

14. PW-3, Mr. Virender Kumar Gupta, elder brother of the deceased deposed that the aforestated articles were identified by PW-1 in his presence. He also reiterated that the deceased used to look somewhere around 25-30 years of age and that he used to dye his hair.

15. Mr. Surender Gupta, PW-7, was the employer of the deceased, who accompanied PW-1 to file a missing report in the Police Station. He deposed that the deceased used to work in his office, namely M/s Gupta Associates and that the Appellant used to visit the deceased at this office. He stated that



the Appellant was close to the deceased and that he was also visiting the deceased's house regularly. He stated that on 07.06.1996, the deceased did not come to the office and on the very day, at around 3PM, the Appellant showed up at the office informing him that the deceased was missing. Later, he accompanied PW-1 in filing a missing report at the Police Station. In his cross-examination, he stated that on 06.06.1996, the deceased left his office at around 4:30 PM, which is 30 minutes prior to his usual timing. When questioned about the age and appearance of the deceased, he stated that the deceased looked to be in the age-group of 40-45 years, however, he did not appear to be anywhere between 25-30 years of age.

16. Dr. U.C. Gupta, PW-8, is a senior Medical Officer who conducted the post-mortem of the deceased. It has been deposed that the post-mortem was done on an unidentified body, wherein rigor mortis was passed on and decomposition of the body had already set in. The following is the relevant portion of the post-mortem report dated 08.06.1996:-

“Antimortem injuries:-

*1) Wound over right side of wrist and forehead 12 c.m.
x 4 c.m. x bone deep.*

*2) Wound over right side face and forehead 3 c.m.
away from injury No.1 8 c.m. x 4 c.m. x bone deep.*

*3) Wound 18 c.m. x 4 c.m. x 5 c.m. on upper part of
neck right side and front*

*4) wound all round left fore arm 25 c.m. below elbow
joint and is missing. Edges and margins of the wound
not clear due to decomposition process.*

Internal examination:-



*There is fracture of right maxilla bone and parietal bone of skull. Membrane of the brain and brain matter is semi liquefied. Right side carotid artery is cutted. Teeths are 16/16 right side 8 upper teeth and 8 lower teeth are crushed and cutted. Death is due to shock and haemorrhage as a result of injuries, **the death is about 3 days old.***

(emphasis supplied)

17. PW-8 states that the age of the deceased is above 30 years and the same is based upon the external appearance and teeth of the dead body. He further stated that if the age of the person is above 50 years and if his appearance is younger to his age, then the age may be construed as 30 years.

18. Dhani Ram, PW-9, informed the police about a dead body lying on the banks of River Hindon on 07.06.1996. He stated that the police could not conduct any inquest proceedings on the said day due to the darkness, however, the police stayed with the dead body all night long. He stated that the inquest proceedings took place the next day and his signatures were obtained. It has been stated that the dead body appeared to be of someone around the age of 30-32 years, however, due to the hair being dyed with *mehendi*, the age of the dead body can be more.

19. PW-11, Harphool, is a witness to the memo pertaining to the identification of articles, which is at Exhibit PW-3/A. He deposed that he runs a *paan* shop outside the Police Station and was called in to be a witness. However, he states that he is unable to recognise the articles which were identified by PW-1 at the police station.

20. SI Suresh Pal, PW-17, stated that he joined the investigation on 13.06.1996. At around 5:30PM, he received an information from a secret informant about the whereabouts of the Appellant. Thereafter, at around



6:30PM, the Appellant was apprehended. It is deposed that the Appellant was carrying a grey coloured polythene bag, which contained the documents of the deceased's flat, a wrist watch, I-Card, pocket diary and documents pertaining to the shop of the Appellant. It is also testified that the watch recovered from the Appellant was blood-stained and that the Appellant was wearing the same shirt that he allegedly wore on the date of occurrence, which was also blood-stained. He also stated that the Appellant pointed out to the place where he threw away the amputated hand of the deceased. It is also stated that the co-accused persons, Vinod and Gian Chand were also apprehended. Thereafter, the articles recovered from the accused persons and other materials from the place of occurrence were shown to PW-1, who confirmed that those belong to her deceased husband. In his cross-examination, he also stated that there were no public witnesses present at the time of the arrest of the accused persons.

21. PW-19, SI Ranjay Atrishya, was handling the instant case before it was handed over to SI Sunil Srivastav (PW-23). He deposed that while he was investigating the case, the name of one Vikas Mittal was mentioned in PW-1 statement and that he interrogated Vikas Mittal. However, his statement was not recorded under Section 161 Cr.P.C.

22. PW-21, Constable Vinod Kumar, deposed that on 07.06.1996, he received information regarding an unidentified dead body. Since it was already dark, the inquest proceedings could not be conducted on the same day. He stated that he remained with the body from 6PM on 07.06.1996 to 8:30AM on 08.09.1996 and that the body was not tampered with. He stated that the dead body was taken for post-mortem and was kept for 72 hours. He also stated that with the condition of the dead body, it was not possible to



determine the age of the deceased.

23. PW-23, SI Sunil Srivastav, who investigated the instant case, narrated the same chain of events as narrated by PW-17. He deposed that on 13.06.1996, a secret information was received regarding the location of the Appellant and reached Dhaula Kaun at around 6:00PM. Upon pointing of the secret informer, the Appellant was recognised and arrested by his team at Dhaula Kaun bus stand, however, no public witnesses were present at the time of arrest. He stated that it was recorded in the Appellant's disclosure statement that Vinod and Gian Chand kidnapped the deceased for ransom and murdered the deceased in the fields of Village Kinwani, Ghaziabad, UP. He also stated that the Appellant was carrying a grey polythene bag, which contains the I-Card, address diary, documents of the deceased's house and Will, GPA, Agreement to sell, SPA etc. belonging to the Appellant was taken into police possession. The same was presented before the PW-1, who identified the said material to be of her deceased husband. It is further stated that the articles i.e., clothes and other apparel recovered on 07.06.1996 from the unidentified dead body was also presented to PW-1, who positively identified it to be of deceased. He also stated that the Appellant pointed out to a vacant plot stating that he threw the left palm of the deceased. He also deposed that the co-accused persons, Vinod and Gian Chand were arrested and they also admitted that they have kidnapped the deceased for ransom and killed him. It was also stated that they too pointed out to a vacant plot where the palm of the deceased was thrown. It was deposed that the police tried to identify and recover the weapon of offence, however, the same was not recovered.

24. In his cross-examination, PW-23 stated that as per the investigation,



the dead body which was recovered was of 58 years old. He stated that the deceased was missing since 06.06.1996, however, he has no knowledge as to the post-mortem conducted on the dead body had died on 05.06.1996.

25. The Appellant in his Section 313 of the Cr.P.C statement denied the allegations levelled against him. More particularly, the Appellant denied that he was arrested on 13.06.1996 at Dhaula Kaun Bus Stand and stated that he was arrested by the police on 08.06.1996 from his home.

26. PW-8/A is the post-mortem report. The post-mortem report indicates that the post-mortem examination was conducted on an unidentified male, who was about 30 years old. It also states that the death occurred due to shock and haemorrhage as a result of injuries. The report also states that the body had wounds on the forehead, face, forearm and neck. However, it states that the body appears to be 3 days old and that there are signs of decomposition. The report also states that the teeth were crushed, the tongue was cut and pharynx was also cut on the right side (upper and lower).

27. The instant case does show that evidence is completely based on circumstantial evidence. The issue which is to be decided as to whether the prosecution was able to establish the entire chain of events related to two separate incidents i.e., recovery of the unidentified body and that the body which was recovered is of the deceased husband of the PW-1.

28. This Court is of the opinion that the story of the prosecution suffers from the following fallacies:

- a. As per the story of the prosecution and the depositions of PW-1, PW-2, PW-7, the deceased left his house on 06.06.1996 for office and did not return home on the said date as well as the subsequent dates, which led to the registration of a missing report as well as an FIR. The



unidentified body recovered from the banks of River Hindon was on 07.06.1996. If the argument of the prosecution is taken to be correct, the dead body will have to be 1 day old. However, the post-mortem report clearly states that the dead body is 3 days old and that there are signs of decomposition.

- b. The post-mortem report also states that the deceased's teeth were crushed, the tongue was cut and pharynx was also cut on the right side (upper and lower). However, this very fact was not confirmed by the investigating police officials especially PW-17 and PW-23. Instead, PW-23, in his testimony, mentioned that the Appellant pointed out that he threw the left palm/hand of the deceased towards a vacant plot near Santosh World Medical Academy. The post-mortem report does not mention that the palm/hand of the dead body was amputated. Even PW-8 has not mentioned anything regarding this in his deposition.
- c. It is also the case of the prosecution that the age of the deceased is 58 years old and that he looked much younger to his actual age. The prosecution tried to impress this Court with the depositions of witnesses, wherein they stated that the body of the deceased appeared to be around 30-45 years of age as the deceased used to look much younger than his actual age. The material on record shows that the unidentified body recovered by the police was around 30 years of age. This was also fortified by the PW-9 stating that the body appeared to be of someone around the age of 30 years. With the uncertainty reflected herein regarding the age of the deceased, the prosecution failed to conclusively establish the age of the deceased or to even indicate that the unidentified body is of the deceased. This major



discrepancy is fatal to the case of the prosecution.

- d. PW-1 and PW-2 have explicitly stated in their testimonies that they identified the body to be that of the deceased based *only* on the pictures of blood-stained apparel. The identification of a dead body cannot be only based on identification of the clothes. The physical attributes have not been verified and more so there is a huge gap in the age.
- e. Material on record indicates that articles belonging to the deceased i.e., tiffin box, Milton water bottle, hot box with 3 tiffins, a small steel box, spoon, knife, wrist watch, apartment papers etc. were recovered from the accused persons. From the Appellant, a wrist watch was recovered. The said articles were also identified by PW-1 stating that it belongs to her deceased husband. The argument raised by the prosecution is that the said articles belonging to the deceased were found with the accused persons and therefore, a reasonable chain can be formed in concluding that the accused persons committed murder of the deceased. The articles of the deceased recovered from the accused persons alone is not sufficient to implicate the accused persons.
- f. It is very much plausible that the two incidents are unconnected and independent and therefore, the link which the prosecution was attempting to establish cannot be sustained.
- g. It was further mentioned that a grey colour polythene bag consisting of deceased's flat documents, a wrist watch, I-Card, pocket diary and documents pertaining to the shop of the Appellant were recovered from the Appellant at the time of his arrest. The said statements made



by PW-17 and PW-23 does not impress this Court as it is highly implausible that an offender would be wearing the very same shirt and carrying the aforesaid material with him at the time of his arrest. In addition to this, the police also were unable to identify the weapon involved and was unable to recover the said weapon. The foregoing information shows that the police made a shoddy investigation, leaving many loopholes in the story of the prosecution.

29. The law pertaining to circumstantial evidence has been crystallized by the Apex Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, which reads as under:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,



(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

30. In the case of Padala Veera Reddy v. State of A.P., 1991 SCC (Cri) 407, the Apex Court reiterated the significance of establishing the chain of events in circumstantial evidence as follows –

“10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and



(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra [(1982) 2 SCC 351 : 1982 SCC (Cri) 431].)

31. The Apex Court had also reiterated the foregoing principle in the case of G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593, which reads as under –

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.



24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

32. Regarding the identification of body, the Apex Court in the case of Kaleeswaran v. State of T.N., (2022) 17 SCC 699 observed as follows:-

“16. The next circumstance relied upon by the prosecution is identification of the body. It may be noted that the corpus when found, was in a highly decomposed condition. Skeletal remains were found after almost 5 months from the date of the incident of the deceased having gone missing. The identification, therefore, was done by getting the skull superimposition test done through PW 16, forensic expert. In Pattu Rajan v. State of T.N. [Pattu Rajan v. State of T.N., (2019) 4 SCC 771 : (2019) 2 SCC (Cri) 354] , this Court has explained that though



identification of the deceased through superimposition is an acceptable piece of opinion evidence, however the courts generally do not rely upon opinion evidence as the sole incriminating circumstances, given its fallibility, and the superimposition technique cannot be regarded as infallible.

17. In the present case, since the superimposition report was not supported by any other reliable medical evidence like a DNA report or post-mortem report, it would be very risky to convict the accused believing the identification of the dead body of the victim through the superimposition test. It is true that in the case based on circumstantial evidence, if the entire chain is duly proved by cogent evidence, the conviction could be recorded even if the corpus is not found, but when as per the case of prosecution, the dead body of the victim was discovered from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and of none else.”

33. Explaining the “last seen theory” and the gaps between the two events, the Apex Court in the case of Chandrapal v. State of Chhattisgarh, (2023) 16 SCC 655 observed as follows:-

“22. This takes the Court to examine the theory of “last seen together” propounded by the prosecution. As per the case of prosecution, PW 1 Dhansingh had seen the accused Chandrapal calling the deceased Kanhaiya and taking him inside his house on the fateful night. Apart from the fact that the said Dhansingh had not stated about the time or date when he had lastly seen Kanhaiya with Chandrapal, even assuming that he had seen Chandrapal calling Kanhaiya at his house when he was sitting at the premises of Village Panchayat, the said even had taken



place ten days prior to the day when the dead bodies of the deceased were found. The time-gap between the two incidents i.e. the day when Dhansingh saw Chandrapal calling Kanhaiya at his house and the day Kanhaiya's dead body was found being quite big, it is difficult to connect the present appellant with the alleged crime, more particularly when there is no other clinching and cogent evidence produced by the prosecution.

23. In this regard it would be also relevant to regurgitate the law laid down by this Court with regard to the theory of “last seen together”.

24. In Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] , this Court held in para 31 that : (SCC p. 63)

“31. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

25. In Jaswant Gir v. State of Punjab [Jaswant Gir v. State of Punjab, (2005) 12 SCC 438 : (2006) 1 SCC (Cri) 579] , this Court held that in the absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of “last seen together”, even if version of the prosecution witness in this regard is believed.

26. In Arjun Marik v. State of Bihar [Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] , it was observed that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused, and therefore no conviction on that basis alone can be



founded.”

34. Therefore, applying the foregoing principles to the present case and the discrepancies listed out hereinabove, this Court is of the considered view that the Appellant herein i.e., Mr. Lakhpat Singh is not guilty of the offence under Section 302 of the IPC and is, hereby, acquitted. Due to his acquittal under Section 302 of the IPC, there holds no ground as to his commission of offence under Section 364 and 201 of the IPC and is accordingly, acquitted.

35. Accordingly, instant appeal is allowed. Pending applications, if any, are disposed of.

36. Bail Bonds are discharged.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

DECEMBER 15, 2025
SM